

2. If so, should the respondent and its insurance carrier be required to provide the medical treatment requested?

**FINDINGS OF FACT**

For preliminary hearing purposes, the Appeals Board finds:

1. Ms. Culwell injured her left breast while working for United Parcel Service on July 18, 1997.
2. After undergoing medical treatment, which included surgery and treatment for staph infection, Ms. Culwell developed a painful, inverted left nipple.
3. Daniel P. Bortnick, M.D., a plastic and reconstructive surgeon, saw Ms. Culwell on July 12, 1999. He believes surgery to correct the inverted nipple could be easily performed in a 30-minute outpatient procedure under local anesthesia.

**CONCLUSIONS OF LAW**

1. The appeal should be dismissed.
2. This is an appeal from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing findings is limited to the following issues, which are deemed jurisdictional.<sup>1</sup>

(1) Did the worker sustain an accidental injury?

(2) Did the injury arise out of and in the course of employment?

(3) Did the worker provide both timely notice of the accident and written claim for benefits?

(4) Are there any defenses to the compensability of the claim?

Additionally, the Appeals Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.<sup>2</sup>

3. The administrative law judges have the authority at preliminary hearings to determine whether medical treatment is or is not appropriate.<sup>3</sup>

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<sup>1</sup> K.S.A. 1998 Supp. 44-534a.

<sup>2</sup> K.S.A. 1998 Supp. 44-551.

<sup>3</sup> K.S.A. 1998 Supp. 44-534a.

4. Ms. Culwell requests the Appeals Board to find that the requested medical treatment is reasonable and necessary and to order it provided. Because of the limits placed on its jurisdiction to review preliminary hearing findings, at this juncture of the proceeding the Appeals Board does not have the authority to reweigh the evidence and redetermine that issue. That is true although the Appeals Board may disagree with the denial of the requested treatment.

5. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>4</sup>

**WHEREFORE**, the Appeals Board dismisses claimant's appeal.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1999.

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BOARD MEMBER

c: Kathleen A. McNamara, Kansas City, MO  
Stephanie Warmund, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director

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<sup>4</sup> K.S.A. 1998 Supp. 44-534a(a)(2).